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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12
13 v.
14 AUHZARAY DELYNN FOSTER,
15 Defendant.

Case No. 2:23-cr-00180-JCM-MDC

**STIPULATION TO CONTINUE
CHANGE OF PLEA HEARING**
(First Request)

16
17 IT IS HEREBY STIPULATED AND AGREED, by and between Jason M. Frierson,
18 United States Attorney, and Lauren Ibanez, Assistant United States Attorney, counsel for the
19 United States of America, and Rene L. Valladares, Federal Public Defender, and Rick Mula,
20 Assistant Federal Public Defender, counsel for Auhzaray Delynn Foster, that the change of plea
21 hearing currently scheduled for August 23, 2024 at 10:30 am, be vacated and set to a date and
22 time convenient to this Court, but no sooner than ninety (90) days.

23 The Stipulation is entered into for the following reasons:

24 1. Mr. Foster filed a motion to dismiss the charge of Prohibited Person in
25 Possession of a Firearm based on *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024) (which
26 itself was based on *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022)). (ECF No. 39.)
In response, the government filed a motion to hold Mr. Foster's dismissal motion in abeyance.

(ECF Nos. 40, 44.) Mr. Foster responded to the government's motion (ECF No. 41), and the government filed a reply (ECF No. 42). The Court granted the government's motion to hold Mr. Foster's dismissal motion in abeyance. (ECF No. 45.) Mr. Foster filed a motion for reconsideration (ECF No. 46) to which the government did not file a reply and which is currently pending. Since filing the motion for reconsideration, the Ninth Circuit has voted to rehear en banc *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024), *vacated pending reh'g en banc*, 2024 WL 3443151 (9th Cir. July 17, 2024).

2. Mr. Foster filed a notice of intent to plead guilty. (ECF No. 48.)

3. Mr. Foster wishes to wait for the en banc review of *Duarte* to conclude before changing his plea.

4. Mr. Foster is incarcerated and does not object to the continuance.

5. The parties agree to the continuance.

6. The additional time requested herein is not sought for purposes of delay, but merely to allow time for a significant decision affecting Mr. Foster's constitutional rights to issue.

7. Additionally, denial of this request for continuance could result in a miscarriage of justice. The additional time requested by this Stipulation is excludable in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, Title 18, United States Code, Section 3161(h)(7)(A), considering the factors under Title 18, United States Code, Section 3161(h)(7)(B)(i), (iv).

This is the first stipulation to continue filed herein.

DATED this 14th day of August, 2024.

RENE L. VALLADARES
Federal Public Defender

By /s/ Rick Mula

RICK MULA
Assistant Federal Public Defender

JASON M. FRIERSON
United States Attorney

By /s/ Lauren Ibanez

LAUREN IBANEZ
Assistant United States Attorney

UNITED STATES OF AMERICA,
Plaintiff,
v.
AUHZARAY DELYNN FOSTER,
Defendant.

IT IS THEREFORE ORDERED that the change of plea hearing currently scheduled for August 23, 2024, at the hour of 10:30 a.m., be vacated and continued to **November 22, 2024, at 10:00 a.m.**

James C. Mahan
UNITED STATES DISTRICT JUDGE